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6 Attorneys for Plaintiff  
I. MICHAEL ROSS  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 I. MICHAEL ROSS,

13 Plaintiff,

14 v.

15 TOMLAB OPTIMIZATION AB,  
16 TOMLAB OPTIMIZATION, INC.,  
and DOES 1 through 20,

17 Defendants.  
18

CASE NO. C08-01052 MHP

**DECLARATION OF STUART C.  
CLARK IN SUPPORT OF  
ADMINISTRATIVE MOTION OF  
PLAINTIFF I. MICHAEL ROSS  
TO CONSIDER WHETHER  
CASES SHOULD BE RELATED**

[N. D. Cal. Civ. L.R. 3-12, 7-11]

**RELATED CASE NUMBER:**  
CASE NO. C08-01596 WHA

19 I, STUART C. CLARK, declare:

20 1. I am an attorney admitted to practice before all of the courts of the State of  
21 California, and before this court. I am attorney of record for the named plaintiff in *I. Michael Ross*  
22 *v. Tomlab Optimization AB, et al.* (“*Ross v. Tomlab*”), No. C08-01052 MHP. I also represent the  
23 named defendant Michael Ross in *Anil Rao v. I. Michael Ross*, Case No. C 08-01596 WHA (“*Rao*  
24 *v. Ross*”), and I expect to become counsel of record in that action after defendant Ross has been  
25 properly served. I make this declaration in support of the Administrative Motion of Plaintiff I.  
26 Michael Ross to Consider Whether Cases Should Be Related (“Administrative Motion”). I have  
27 personal knowledge of the facts stated herein and, if called as a witness, I could and would  
28 competently testify thereto.

2. Attached as Exhibit "A" is a true copy of the Civil Cover Sheet filed in the action of *Rao v. Ross*, on which that action is described as being related to the case of *Ross v. Tomlab*.

3. *Ross v. Tomlab* is an action for copyright infringement and unfair business practices. Both of those causes of action are based on the distribution by defendants Tomlab Optimization A.B. and Tomlab Optimization, Inc. of a GPOCS software program which plaintiff Ross alleges to be infringing of his copyright in his DIDO software product. Amended Complaint, ¶¶ 11-25. The party on behalf of whom Tomlab distributes the GPOCS software is Anil Rao, the plaintiff in *Rao v. Ross*. *Id.*, ¶ 12.

4. *Rao v. Ross* is an action for declaratory judgment, libel per se, and slander per se. The declaratory judgment cause of action seeks a judgment that Rao's GPOCS program does not infringe any copyrights owned by Ross, i.e. the exact opposite of the relief sought by Ross in *Ross v. Tomlab*. Prayer to Complaint, ¶ (a). The libel and slander causes of action are related to Ross' allegations that Rao infringed the copyright in and "plagiarized" Ross' DIDO software.

5. Under the circumstances described in paragraphs 3 and 4, above, determination of the common copyright infringement issues presented in both the *Ross v. Tomlab* and *Rao v. Ross* will resolve substantially all of the issues to be adjudicated in those cases.

6. Since adjudication of the same copyright infringement issues will resolve substantially all of the disputed issues in both cases, it is clearly wasteful of judicial resources that each case should be independently adjudicated by a different judicial officer. Indeed, the common issues are so all-encompassing that at some time in the future the cases should probably be consolidated for trial, if not for all purposes.

7. I have been unable to obtain a stipulation to the actions being treated as related. I cannot delay filing this motion any longer, because I was informed by counsel for plaintiff in the *Rao v. Ross* action (Mr. Eletich), by email at 4.18 p.m. yesterday afternoon, that he intends to file an application today for an order shortening time to bring a motion to permit early discovery. Given the desirability of resolving the related case issue before any judicial officer is assigned to hear the proposed application, at 8.41 a.m. today I emailed a proposed stipulation to Eletich and prospective counsel for Tomlab Optimization, Inc., David Newhouse, Esq. for the cases to be

1 treated as related. A copy of that proposed stipulation and my cover letter are attached as  
2 composite Exhibit "B". The accompanying letter asked that Messrs. Newhouse and Eletich should  
3 indicate by noon whether they agreed to stipulate, as requested. Mr. Newhouse informed me that  
4 while he had no objection to stipulating, and had already prepared his own motion for the actions to  
5 be treated as related, he had not yet been formally retained and therefore could not yet appear in the  
6 action. Mr. Eletich did not respond to my emailed request, nor did he respond to a Voicemail  
7 message left for him at approximately 11.45 a.m. on April 4, 2008. Under the circumstances, Ross  
8 is unable to present a stipulation of the parties in support of this motion.

9 I declare under penalty of perjury under the laws of the United States of America that the  
10 foregoing is true and correct.

11 Executed this 3<sup>rd</sup> day of April, 2008 at Palo Alto, California.

12  
13  
14 /s/ Stuart C. Clark

STUART C. CLARK

CASE NAME: *I. Michael Ross v. Tomlab Optimization AB, et al.*

CASE NO. C08-01052 MHP

PROOF OF SERVICE

I am a citizen of the United States. My business address is 2200 Geng Road, Palo Alto, California 94303. I am employed in the county of Santa Clara where this service occurs. I am over the age of 18 years and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as DECLARATION OF STUART C. CLARK IN SUPPORT OF ADMINISTRATIVE MOTION OF PLAINTIFF I. MICHAEL ROSS TO CONSIDER WHETHER CASES SHOULD BE RELATED


☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Palo Alto, California.

David E. Newhouse, Esq.  
Newhouse & Associates  
477 9th Avenue, Suite 112  
San Mateo, CA 94402-1858  
Attorneys for Defendant  
TOMLAB OPTIMIZATION

Derek A. Eletich, Esq.  
Law Office of Derek A. Eletich  
155 Forest Avenue  
Palo Alto, CA 94301-1615  
Attorneys for Plaintiff ANIL RAO  
in Related Case No. C08-01596 WHA

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 3, 2008 at Palo Alto, California.

  
Matthew Peterson

JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

ANIL RAO

**DEFENDANTS**

I. MICHAEL ROSS

(b) County of Residence of First Listed Plaintiff, Alachula  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Monterey County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Office of Derek A. Eletich  
155 Forest Avenue  
Palo Alto, CA 94301-161  
(650) 543-5477

Attorneys (If Known)

**C08 01596 BZ**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input checked="" type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits		<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability			<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property					

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 2201

Brief description of cause:

Declaratory Judgment

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Declaratory Relief

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". C 08 01502 MHP

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☐ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE  
March 24, 2008

SIGNATURE OF ATTORNEY OF RECORD

*Derek A. Eletich*

**EXHIBIT A**

CARR & FERRELL LLP  
ATTORNEYS AT LAW

WRITER'S DIRECT DIAL NUMBER  
(650) 812-3415

April 3, 2008

By Email Only

Derek A. Eletich, Esq.  
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155 Forest Avenue  
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Toss v. Tomlab/Rao v. Ross

Dear Counsel:

It is apparent that since the primary issue for adjudication in both of the above actions is whether or not the GPOCS product infringes Dr. Ross' copyright, the actions are related within the definition in Local Rule 3-12. Based on his Voicemail message yesterday, I understand that Mr. Newhouse agrees that this is the case.

Local Rule 3-12(b) requires that whenever a party knows or learns that an action is related, a motion must be promptly filed. Under Local Rule 7-11(a) that motion is required to be accompanied by a stipulation or an explanation why a stipulation could not be obtained.

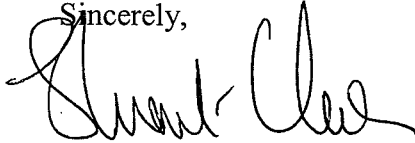
In light of the foregoing, I attach a draft of a proposed stipulation for your review and comments. If you have any suggested changes to the draft, please let me know.

Especially given Mr. Eletich's threat to file an expedited motion before Judge Alsup today, a motion or stipulation under Rule 3-12 needs to be filed without delay, so that judicial resources are not wasted. Accordingly, I ask that you kindly sign and return the attached stipulation as soon as possible, or else advise me immediately if you are unwilling to sign.

Unless I have a fully executed stipulation in my hands by noon, I will simply file a motion under Rule 3-12.

Derek A. Eletich, Esq.  
David E. Newhouse, Esq.  
April 3, 2008  
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart C. Clark". The signature is fluid and cursive, with the first name "Stuart" and last name "Clark" clearly distinguishable.

Stuart C. Clark

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6 Attorneys for Plaintiff  
I. MICHAEL ROSS  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 I. MICHAEL ROSS,

13 Plaintiff,

14 v.

15 TOMLAB OPTIMIZATION AB,  
16 TOMLAB OPTIMIZATION, INC.,  
and DOES 1 through 20,

17 Defendants.  
18

CASE NO. C08-01052 MHP

**STIPULATION IN SUPPORT OF  
ADMINISTRATIVE MOTION OF  
PLAINTIFF I. MICHAEL ROSS  
TO CONSIDER WHETHER  
CASES SHOULD BE RELATED**

[N. D. Cal. Civ. L.R. 3-12, 7-11]

**RELATED CASE NUMBER:**  
CASE NO. C08-01596 BZ

19 WHEREAS:

20 A. In this action (the "Ross Action"), which was filed on February 21, 2008, plaintiff  
21 Michael Ross ("Ross") seeks an adjudication, among other things, whether the Tomlab defendants  
22 ("Tomlab") are infringing his copyright in a certain software program by distributing the GPOCS  
23 software program on behalf of non-party Anil Rao ("Rao");  
24

25 B. In an action filed on March 8, 2008 under Case No. C08-01596 WHA (the "Rao  
26 Action"), Rao seeks a declaratory judgment, among other things, that the GPOCS software program  
27 does not infringe Ross' copyright;  
28



1 C. Counsel for the parties to the actions referred to in paragraphs (a) and (b), above  
2 (except for Tomlab Organization, A.B, which has not yet been served) are in agreement that the  
3 Rao Action is related to the Ross Action, within the meaning of Local Rule 3-12(a), in that both  
4 actions concern the same parties and property or event, and it appears likely that there will be an  
5 unduly burdensome duplication of labor and expense and/or conflicting results if the cases are  
6 conducted before different judges:  
7

8 NOW THEREFORE, IT IS HEREBY STIPULATED by and between the following parties,  
9 through their respective counsel, that the Rao Action is related to the Ross Action for purposes of  
10 Rule 3-12, and that the motion by Ross to consider whether the cases are related may be granted.  
11

12 Dated: April , 2008

CARR & FERRELL LLP

13  
14 By: \_\_\_\_\_

STUART C. CLARK

Attorneys for plaintiff I. Michael Ross in the Ross  
Action and for defendant I. Michael Ross in the Rao  
Action

15  
16  
17 Dated: April , 2008

NEWHOUSE & ASSOCIATES

18  
19  
20 By: \_\_\_\_\_

DAVID E. NEWHOUSE

Attorneys for defendant Tomlab Optimization, Inc.  
in the Ross Action

21  
22 Dated: April , 2008

LAW OFFICE OF DEREK A ELETICH

23  
24  
25 By: \_\_\_\_\_

DEREK A. ELETICH

Attorneys for plaintiff Anil Rao in the Rao Action